

1 Kevin Gerry (State Bar # 129690)  
2 The Law Offices of Kevin Gerry  
3 A Professional Corporation  
4 1001 Olive Street  
5 Santa Barbara, California 93103  
6 (310) 275-1620

7 Attorneys for Defendant Marcus Food Co.

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9  
10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
12

13  
14 CATLIN UNDERWRITING AGENCIES  
15 LIMITED,

16 Plaintiff,

17 vs.

18 SAN DIEGO REFRIGERATED SERVICES,  
19 INC., dba HARBORSIDE dba SAN DIEGO  
20 TERMINALS, PLA-ART INTERNATIONAL  
21 dba SAN DIEGO COLD STORAGE; SAN  
22 DIEGO COLD STORAGE, INC., MIGUEL  
23 CUEVA aka MIGUEL TAMAYO; SERGIO  
24 HERNANDEZ; MARCUS FOODS, INC.,  
25 and DOES 1 through 50, inclusive,

26 Defendants.  
27  
28

CASE NO.: 08-CV-0173-WQH-JMA

DEFENDANT MARCUS FOOD CO.,  
ERRONEOUSLY SUED AS MARCUS  
FOODS, INC., 'S ANSWER TO THE  
COMPLAINT FOR DAMAGES

TO ALL PARTIES AND COUNSEL OF RECORD:

1 Defendant Marcus Food Co., (hereinafter "Defendant") hereby Answers the  
2 Complaint for Damages filed by Plaintiff Catlin Underwriting Agencies Limited (hereinafter  
3 "Plaintiff") as follows:  
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5  
6 1. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
7 deny this allegation.

8 2. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
9 deny this allegation.  
10

11 3. Admit.

12 4. Admit.

13 5. Admit.

14 6. Admit.

15 7. Admit.  
16

17 8. Defendant Marcus Food Co., denies these allegations. Defendant Marcus Food  
18 Co., is a Kansas Corporation with its principal place of business in Wichita, Kansas.

19 9. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
20 deny this allegation.  
21

22 10. Admit.

23 11. Admit.

24 12. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
25 deny this allegation.

26 13. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
27 deny this allegation.  
28

1 14. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
2 deny this allegation.

3 15. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
4 deny this allegation.  
5

6 16. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
7 deny this allegation.

8 17. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
9 deny this allegation.  
10

11 18. Admit.

12 19. Admit.

13 20. Admit

14 21. Admit.

15 22. Admit.

16 23. Admit.

17 24. Admit.

18 25. Admit.

19 26. Admit

20 27. Admit.

21 28. Admit.

22 29. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
23 deny this allegation.  
24

25 30. Admit.

26 31. Admit.

27 32. Admit.  
28

1 33. Admit.

2 34. Admit.

3 35. Admit.

4 36. Admit.

5  
6 37. Defendant Marcus Food Co., denies these allegations. Once the Marcus Food Co.,  
7 products were released without authorizations they were no longer traceable.

8 38. Admit.

9 39. Admit.

10 40. Admit.

11 41. Admit.

12  
13 42. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
14 deny this allegation.

15 43. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
16 deny this allegation.

17  
18 44. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
19 deny this allegation.

20 45. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
21 deny this allegation.

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23 46. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
24 deny this allegation.

25 47. Defendant Marcus Food Co., incorporates by reference each response as set forth in  
26 paragraphs 1 through 46 inclusive.

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1 48. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
2 deny this allegation.

3 49. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
4 deny this allegation.  
5

6 50. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
7 deny this allegation.

8 51. Admit.

9 52. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus  
10 Food Co., alleges that the conduct (the unauthorized release of food products) was  
11 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that  
12 said conduct may have been inadvertent or negligent.  
13

14 53. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
15 deny this allegation.  
16

17 54. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus  
18 Food Co., alleges that the conduct (the unauthorized release of food products) was  
19 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that  
20 said conduct may have been inadvertent or negligent.  
21

22 55. Not Applicable.

23 56. Defendant Marcus Food Co., incorporates by reference each response as set forth in  
24 paragraphs 1 through 55 inclusive.

25 57. Admit.

26 58. Admit.

27 59. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus  
28 Food Co., alleges that the conduct (the unauthorized release of food products) was

1 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that  
2 said conduct may have been inadvertent or negligent.

3 60. Not Applicable.

4 61. Defendant Marcus Food Co., incorporates by reference each response as set forth  
5 in paragraphs 1 through 60 inclusive.

6 62. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
7 deny this allegation.

8 63. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
9 deny this allegation.

10 64. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
11 deny this allegation.

12 65. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
13 deny this allegation.

14 66. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
15 deny this allegation.

16 67. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
17 deny this allegation.

18 68. Not Applicable.

19 69. Defendant Marcus Food Co., incorporates by reference each response as set forth  
20 in paragraphs 1 through 68 inclusive.

21 70. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
22 deny this allegation.

23 71. Admit.

1 72. Admit.

2 73. Admit.

3 74. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
4 deny this allegation.  
5

6 75. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or  
7 deny this allegation.

8 76. Not Applicable.  
9

10  
11 **AFFIRMATIVE DEFENSES**  
12

13 1. The Complaint for Damages, as well as each and every purported claim for relief or  
14 cause of action alleged therein, fails to state a claim upon which relief can be  
15 granted.  
16

17  
18 2. The Complaint for Damages, as well as each and every purported claim for relief or  
19 cause of action alleged therein, is barred by the applicable statute of limitations.  
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21  
22 3. The Complaint for Damages, as well as each and every purported claim for relief or  
23 cause of action alleged therein, is barred by Plaintiff's failure to migrate their  
24 damages, if any.  
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26  
27 4. The Complaint for Damages, as well as each and every purported claim for relief or  
28 cause of action alleged therein, is barred by the doctrine of unclean hands.

- 1       5. The Complaint for Damages, as well as each and every purported claim for relief or  
2       cause of action alleged therein, is barred because the Defendant Marcus Food Co.,  
3       at all times acted in conformity with, and reliance upon, applicable rules, regulations,  
4       and standards.  
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- 6
- 7       6. The Complaint for Damages, as well as each and every purported claim for relief or  
8       cause of action alleged therein, is barred because defendants' obligations were  
9       waived, excused or prevented by the conduct of Plaintiff and/or a third party.  
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- 11
- 12       7. The Complaint for Damages, as well as each and every purported claim for relief or  
13       cause of action alleged therein, is barred by the Plaintiff or a third party's breach of  
14       contract.  
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- 16
- 17       8. The Complaint for Damages, as well as each and every purported claim for relief or  
18       cause of action alleged therein, is barred by the failure to satisfy conditions  
19       precedent and/or subsequent.  
20
- 21
- 22       9. The Complaint for Damages, as well as each and every purported claim for relief or  
23       cause of action alleged therein, because Plaintiff's damages, if any, were sustained  
24       as a direct and proximate result of the intervening and superseding acts and/or  
25       omissions of persons, things, or entities, other than Defendant Marcus Food Co.,  
26       that were outside the control of Defendant Marcus Food Co.  
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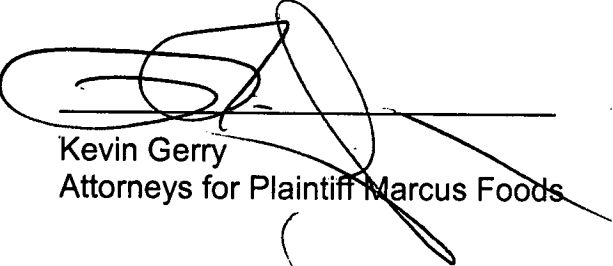
1 10. Plaintiff intentionally, recklessly or negligently failed to investigate the matters that  
2 are the subject of the Complaint for Damages and disregarded either known  
3 information and risks or information and risks that Plaintiff should have known  
4 through the exercise of reasonable care.  
5

6  
7 11. Defendant Marcus Food Co., was not a party to the contract at issue, nor was  
8 Defendant Marcus Food Co., in privity with a party to the contract at issue.  
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12 DATED: March 14, 2008

**THE LAW OFFICES OF KEVIN GERRY**

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Kevin Gerry  
Attorneys for Plaintiff Marcus Foods

**PROOF OF SERVICE**

I, Kevin Gerry, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am over the age of 18 and not a party to this case.

My business address is: 1001 Olive Street  
Santa Barbara, CA 93101

On the date stated below, the foregoing documents described as:  
PLAINTIFF MARCUS FOOD CO., 'S ANSWER TO THE COMPLAINT FOR DAMAGES

Were served on the interested parties in said action, by:

☒ (MAIL SERVICE) placing the original or true copies thereof, enclosed in a sealed envelope, first class postage pre-paid and addressed to:

☐ (OVERNIGHT MAIL) placing the original or true copies thereof, enclosed in a sealed overnight mail envelope addressed to:

☐ (PERSONAL SERVICE) delivering said documents by hand to:

☐ (FACSIMILE) causing delivery via facsimile to:

☐ (E-MAIL) causing delivery via electronic mail to:

The following addressees:

Jack Hsu  
Christensen & Ehret  
222 W. Adams Street, suite 2170  
Chicago, IL 60606

This document was executed in Santa Barbara, California on:

3/17/08

Date

  
Declarant